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ABSTRACT

The recent expansion of collective bargaining among faculty unions has led to the establishment of new organizational rules. These new rules eliminate discretion, but unlike traditional rules imposed by superiors to control subordinates, collective bargaining initiates a different format for rule-making--formal joint determination. Collective bargaining rules are created as a form of mutual or reciprocal accommodation of rights and obligations between superior and subordinate. Two types of rules are discussed: performance rules that instruct all parties how and how not to act, and compliance rules created to persuade or compel parties affected by a performance rule to act in accordance with it. Several functions that rules are expected to perform are detailed including rules that legitimate, warn, indoctrinate, stabilize, standardize, and protect. A sample of how rules affect institutional roles is given. (JMF)

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Faculty Union Contracts: The New Organizational Rules

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Organizations are groups of related units of which the degree, nature and intent of the relationships are varied and imperfectly known. Their structural properties such as division of labor, system of authority, standarizations, decision mechanisms, and beyond, are often raveled, each within itself and more so as they intertwine. The interpersonal processes operating within, among and around structural properties add to the entanglements. And organizations have diverse functions which they seek to execute. Organizational rules are created to facilitate structural, interpersonal and functional domains of organization as they operate simultaneously, in but sometimes out of concert, all in the pursuit of purpose.

Faculty unions reside within this context of diverse general and specific conditions and internal audiences, supplemented and amended as they are by agencies and situations external to the institution. The union, created through voting recognition, is able to generate considerable power beyond its formal authority. This authority and power is applied to the properties of the host institution so as to negotiate contractual conditions that ensure membership welfare and support, and hence union survival.

A union's conduct is not confined to a limited series of bargaining sessions producing an Agreement upon which all subsequent institutional decisions rest during the life of the Agreement. Unionism is a constantly recurring exchange between the union and the administration, and within each of them, over the processes, the products and the consequences, intended or otherwise, of contractual development, clarification, modification, execution and re-development. These complex processes play across the organization's structural nature and interpersonal ties and condition the manner in which intentions are executed—how the institution is governed.

Collectively, these desiderata summarize to a different set of arrangements than existed in an earlier organizational state. The view of this paper is that the existence of the union, the emphasis of the union's concerns, and the processes used and caused by unions, reflected in an Agreement, constitute in higher education a new forum for the generation and execution of rules that substantially influence the nature of governance, and institutions.

What Is a Rule?

Rules have been defined variously. For some a rule is a designated guide for one's performance. For others a rule may be a regulating order or direction. For still others a rule is a principle that regulates conduct. Regardless of the variations in rule statements, the defining property may be stated very simple: rules control.

As control statement much is expected of rules, whether created by collective bargaining or any other means. Rules are expected to provide legitimation, protection, standardization, stabilization, indoctrination, prediction, warning, punishment, obligation, coordination, the reduction of options, the altering of autonomy, and much more. As control statements rules place a tight reign on management: by the very nature of them rules eliminate discretion. Listen to Koontz on rules: "The test of discretion is essential in order to separate policies from rules and procedures. . .Rules are requirements for a given action or non-action, and a rule cannot imply discretion. . .In the case of rules and procedures, if the rules. . .are correctly conceived and applied, people are not expected to think. . ." All of this will be found as a faculty union positions itself in institutional space through the concerns and processes which characterize the unionized campus.

Mutual Rule Determination

In his analysis of bureaucracies, Weber noted the use of administrative rules to order the activities of organization members in regular and continuous ways. These regulating rules are a function of bureaucracy, flowing downward as superiors exercise appropriate formal control over subordinates. In short and in general, rules are the creations of superiors to control subordinates.

Collective bargaining initiates a different format for rule making—formal joint determination. The union negotiates with the administration an Agreement whose arrangements specify that under given conditions certain events or classes of events are or are not to occur. It is incumbent upon those persons affected by the several Agreement provisions to comply with them. In effect, when an Agreement provision requires the superordinate to act in a continuing way, a controlling rule has been devised, not in the hierarchical downward manner, but as a form of mutual or reciprocal accommodation of rights and obligations between superior and subordinate. Since the Agreement is legally enforceable and the rules are binding, the Agreement as rules conditions those facets of governance to which they obtain, as it is the administration that largely is responsible for implementing the performance rules.

Rules in Agreements may be classified in a variety of ways, two of which are by performance and by compliance.

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Performance Rules. The purpose of performance rules is to instruct union members and administrators how or how not to act. In an evaluation clause a performance rule states that "The faculty member must receive one written warning from the appropriate administrator." This is a fairly typical statement clearly lacking discretionary behavior, as is one requiring a college administrator to see that "accurate records are kept of professional staff locations as reported to them by the professional staff. These records shall be passed on to relief operators so that no continuity of information shall be lost." The rule ends with the word "operators;" the remainder of the sentance is a rationale for the required duty. Or, the statement "The associate Dean may not, without the faculty member's consent. . . ." Either there is a written document or there is not. Either there is a set of records or there is not. Either there is a written consent statement or there is not. Performance can be specified and verified, and hence, made subject to control. The rule eliminates discretion as it presides.

Compliance Rules. Compliance rules are created to persuade or to compel persons intended to be affected by a performance rule to act in accordance with it. Compliance rules as formal control mechanisms act to guarantee that mutually designated performance expectations do in fact become realities within the letter and the spirit of the arrangements.

Compliance rules are much more difficult to locate in Agreements than are performance rules. Compliance usually carries the meaning of a negative sanction applicable to a party to the Agreement for failure to comply with some provision, or failure to comply in the directed manner.

Two major forms of compliance rules readily found in Agreements, however, are due process provisions and the grievance mechanism. Due process provisions are specifically written into Agreements. A few years ago there would appear a specific Agreement clause listing exact due process protections: written specifications of charges; the right to counsel, examination and cross-examination of witnesses, and similar rights under due process. Although some Agreements still contain such specific due process clauses, the tendency is to state specific due process protections in various Agreement places where there is likely to be a need for that protection.

Grievance procedures are exceedingly explicit compliance rules. Exact procedural steps are stated from the inception of filing the grievance through the obtaining of an arbitrator's award. Compliance, when arbitration is binding, is mandatory.

The procedures themselves are less important per se than that over which a grievance may be lodged as far as governance compliance is concerned. Unless a passage expressly holds otherwise, every statement, every requirement in the Agreement is subject to a grievance, and thus is the compliance power of the grievance mechanism as it relates to union incursions into the governance function. Incidentally, there are Agreements which permit the union to grieve against the administration of *all* institutional policies, not just statements in the Agreement. Then the grievance mechanism as a compliance rule is indeed one of power in the enforcement of performance rules.

In classifying rules as performance and compliance it becomes clearer that the authority in colleges and universities indeed has been changed in important ways from traditional hierarchical downward control to one of mutual accommodation. That accommodation now is enforced by compliance devices, and that is the power in the hands of the faculty that influences administrative performance as delineated in Agreement conditions.

Rule Functions

The tasks expected of and performed by rules are numerous. Through their elaboration by a different set of arrangements can be gleaned some sense of the pervasiveness of this new rule enacting forum called collective bargaining, and how deeply into the institutional structure and interpersonal ties these mutually determined rules penetrate to influence administrative performance.

Rules Legitimate. In Gouldner's view, rules "comprise a functional equivalent for direct, personally given orders [which] specify the obligations of the workers. . .to do particular things in definite ways." As long as behavior is as proposed, it is affirmed to be justified. Under collective bargaining, the Agreement statements which both require and justify administrator actions, or non-actions as the case may be, have been constructed by the joint "acceptance" of rules mutually determined through negotiations and legitimated by the union membership and by the Trustees.

As not before, the organizational subordinates through collective strength have acquired a formal procedure and device to construct, or be significantly instrumental in the construction of, a set of written statements which comprise a functional equivalent for personally given orders to those administrators whose actions previously had been legitimate only by the traditional acceptance of the principle of hierarchy. Now we find in higher education a new and operative meaning of the principle of consent of the governed. When subordinates can define and legitimate the behaviors of superordinates through a collective power device and subsequent document that is legally enforceable, there has been a dramatic shift in the nature of the forum within which institutional governance occurs, and hence the great potential, if not the in-fact occurrence, of fundamental adjustments in the nature of the academy itself.

What has been legitimate may not be fully anticipated. In many Agreement clauses the wording is extremely precise, as in many salary provisions. But loosely written material, and there is much of this in contracts, leaves uncertain what these "personaliy given" orders are. When the union perceives that administrative behavior is not as proposed, and if through meet and discuss sessions there does not emerge a satisfactory clarification, the grievance compliance mechanism can be applied. The outcome of the grievance process legitimates behaviors.

Rules Warn. As statements indicating behavioral expectations, rules authorize appropriate warnings to those who might act in a manner contrary to them. Returning to Gouldner, rules "comprise explicit or implicit warnings concerning the kind of behavior which will provoke punishment." An example of a warning to a college president that any form or degree of arbitrary or capricious judgment and action will not be tolerated is contained in this illustrative Agreement passage: "Any reduction in rank, however, can only be made by the administration for just cause and is subject to the grievance and arbitration procedures of the contract."

In this case, and in others, the warning generally turns to a compliance mechanism to help ensure that the expected behavior becomes the actual one. Without the ability to level punishment against rule offenders, unrewarding behavior might not occur, reminds Perrow. Without such a rule function those persons subject to Agreement stipulations may feel no need to comply with them. Rules warn,

then, as a means of control, with compliance rules to enforce that which is warned against.

Rules Indoctrinate. Legitimation seems to justify indoctrination. Obtaining employment in College "B" does not imply an isomorphic transition from prior experience in College "A". There are new rules to be learned until a satisfactory degree of conformity reflects the internalizaton of behavioral expectations particular to College "B". In this manner the defining character of the organization is preserved. Over time the Agreement brings about a modified form of behavior that becomes an expected, justified pattern of behavior.

The terms of the Agreement are mutually determined by the union and the administration. Organizational internals must adjust to those new conditions, or in their failures to do so they may suffer from the application of compliance mechanisms. It seems to follow that the union, a party to Agreement terms, helps define the nature of the indoctrination of all those subject to the terms of the Agreement. Since indoctrination is a form of control, and since the Union helps spell out performance rules in the Agreement, the union exercises a substantial degree of control over the governance processes of the institution.

Rules Stabilize. Rules in Agreements lend an element of stability to the institution as they moderate administrative performance. The Agreement stabilizes, of course, because it acts as a property of the institution that causes a particular class of events, when disturbed, to return to the original condition. The following Agreement passage is illustrative.

> If there is any disagreement concerning the guidelines established by past practice with respect to the maximum class size of any course, a representative of the Association, the concerned faculty member(s), and the Vice-President shall meet to determine what the guidelines established by past practices are.

In this passage we find the disruption of a previously established operational condition; we find the rule condition that prohibits discretion; and we note as well the intent to return o the original condition—whatever the past practice happened to be.

The impact of stabilizing rules in the Agreements is rather broad as it influences administrator performance. As seen above, stabilizing rules act to suppress discretion and to restore order. They tend, then, to increase performance predictability of those who fall within their purview. As shown in the following passage, stabilizing rules can affect the allocation of resources, and in so doing influence planning by adding an increase in certainty to any particular situation.

> The justification for continuing any scheduled class which has an actual enrollment of less than fifteen (15) students by the first day of the quarter will be reviewed by the program administrator, the academic employee who has been assigned the class, and the department chairman.

With respect to rules and organizational stability, this comment by Perrow is instructive:

> When. . .matters are complex, it is not possible to allow personnel to do their own thing no matter how much they might prefer that. And every time variability in handling personnel is introduced by these complexities, rules are required to limit the discretion of those with power to handle people under them.

Rules Standardize. As with the other forms of rule functions, as statements that standardize, rules reduce or eliminate discretion. One form of rule standardization is procedural. Certain Agreement articles are heavily laced with procedural standardizations. The following paragraph taken from an article on faculty retrenchment focuses the point.

> Reinstatement of faculty members who are on involuntary leaves-of-absence shall be in inverse order of their placement on such leave; if circumstances arise in which more than one faculty member qualifies for an opening, then reinstatement shall be in the same manner as stated above.

A second form of standardization revolves around the notion of comparability of judgment for purposes of equity. Agreements usually contain articles on faculty evaluation. To help ensure fariness of assessment, the rule may be similar to this one.

> Evaluation shall include classroom techniques and methods; preparation of course syllabi and objectives; methods, systems and materials used to evaluate students; adherence to professional standards and codes of ethics; and relationships with peers and students.

The reduction of choices and discretion standardizes by stating the nature of intended conditions that are or are not to occur under given conditions. This helps to ensure a continuity of behaviors when those persons subject to them are changed. Standardization does not preclude adaptability. The occurrence of new technologies or other interventions may change conditions under which rules apply. Still, the general nature of rules absorbs occasional variances and bring them into the general stability of the unit. It seems to follow that who controls the statement of rules controls a substantial part of the direction in which standardization will occur: what is stabilized is the degree to which they may control long-term governance directions.

Rules Protect. Within, between and among constitutencies, rules interlock in protective interdependence. Observed Perrow:

> Every office in every department has seen to it that its autonomy is protected by rules. If one attempts to change one rule, he immediately runs into the problem that half a dozen other rules are connected to it, to change these, a geometric proportion of additional rules will be affected, and so on.

Later he continues:

> An attempt to change these tough invisible threads means that all kinds of practices, bargains, agreements, and pay-offs will tumble out of the web and must be staffed back in again.

Rules Reorganized

There are other ways to organize the statements in Agreements when they are viewed as rules. In an abbreviated staccato-like listing, rules affect institutional roles in the following categories of behavior:

Types of Rules	Examples
Group directive	"The Committee shall develop proposals. . ." or,
	"The Budget Committee shall meet with the President from time to time. . ."
Individual directive	"The Dean shall receive and maintain. . . "

Types of Rules	Examples
Action to be taken	"The Committee shall meet for the purpose of discussing informationally the development of the budget requests. . ." or, "The President shall submit a final recommendation. . ."
Time frame	"The Council shall meet at regular times. . ." or, "Within three (3) days after such a discussion the Dean shall. . ."
Unit affected	"Each Department shall establish a Faculty Committee. . ."
Joint responsibility	"Each faculty member and Department Chairman shall. . ." or, "The Divisional Evaluation Committee shall transmit to the Academic Dean and to the Committee on Faculty Advancement. . ."
Obligation	"A written critique shall be made. . ." or, "To review the actions of. . ." or, "The Faculty shall be observed. . ."
Protection	"The Committee shall afford the faculty member the right of cross-examination. . ." or, "make all rulings regarding the evidentiary and procedural issues presented."
Findings	"The Committee may, after careful review, find that the College has no further interest in. . ." or, "The decision of the President shall be final and binding."

Through unionization rule formulation reverses the direction in which control mechanisms are formulated and applied. Stemming from history—established rights, duties, prerogatives and discretionary domains—rules in part define the turf that is being occupied and warn against transgressions. They also indicate how the several territories interface and relate to a broader set of organizational conditions and intentions.

So it is that rules, generated and given public character to guide those who operate with and within an organization, control those who do so. These behavioral shaping processes, one of which is collective bargaining under faculty unionism, contribute to the complex nature of organizations.

What is important to note here is that subordinates now can impose performance expectations on their organizational superiors, leading to new governance arrangements. This shift in the locus of rule making to one of joint determination indeed causes shifts in role expectations that reverberate along many structural and interpersonal facets of organization, summarizing in, at least in the short run, complications that weigh seriously on the issue of who governs in colleges and universities.